

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

S & A TIRE AND AUTO, INC. )  
d/b/a ELLISVILLE FIRESTONE, )  
 )  
 Plaintiff, ) Case No. \_\_\_\_\_  
 )  
 v. )  
 )  
 A.U.L. CORP., ) JURY TRIAL DEMANDED  
 )  
 and )  
 )  
 JOHN DOES 1-10, )  
 )  
 Defendants. )

**NOTICE OF REMOVAL**

NOW COMES Defendant A.U.L. Corp. (“AUL”), by and through its attorneys, and hereby respectfully removes the above-captioned case from the St. Charles County Circuit Court, Missouri, Case No. 1611-CC00521, to the United States District Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446. Defendant removes this case to this Court because it involves allegations under the Telephone Consumer Protection Act, 47 U.S.C. § 227. In support of removal, the defendant state as follows:

**BACKGROUND**

1. On June 9, 2016, Plaintiff S & A Tire and Auto, Inc. d/b/a Ellisville Firestone (“Plaintiff”) filed its Class Action Junk-Fax Petition (“Petition”) in the Circuit Court of St. Charles County, Missouri, Case No. 1611-CC00521. AUL’s registered agent was served with a summons and the Petition on or about June 21, 2016. This action is therefore timely removed pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty (30) days from the date that AUL was served with a copy of Plaintiff’s Petition. *See Murphy Bros., Inc. v. Michetti Pipe Stringing,*

Inc., 526 U.S. 344, 356 (1999) (holding that the thirty (30) day removal period does not begin to run until defendant is formally served); Marano Enters. Of Kansas v. Z-Teca Rests., L.P., 254 F.3d 753, 756-57 (8th Cir. 2001) (same).

2. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 2.03, a complete copy of the court file from the St. Charles County Circuit Court, Missouri, including true and correct copies of Plaintiff's Petition, Summons, Return of Summons, and all other process, pleadings and orders received by AUL, is attached herein as Exhibit A.

3. Plaintiff's Petition alleges that AUL and John Does 1-10 violated the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, by allegedly faxing an "advertisement" to Plaintiff, as well as the putative class members, without the recipients' permission.

4. Defendants John Does 1-10 are currently unknown fictitious defendants and need not consent to removal of this matter at this time. *See K.L. v. State Farm Mut. Auto Ins. Co.*, No. 4:05CV1950 TCM, 2006 WL 51192 (E.D. Mo. 2006) (stating that defendant's consent to removal would not have been necessary if it were a "John Doe" unknown).

5. Further, Defendants John Does 1-10 are unserved and "the consent of unserved defendants need not be obtained to effectuate removal." Roberts v. Palmer, 354 F.Supp.2d 1041, 1044 (E.D. Mo. 2005).

#### **FEDERAL QUESTION JURISDICTION**

6. The action Plaintiff has filed in state court is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because the action asserts claims under the TCPA, which "aris[es] under" the "laws . . . of the United States." *See Mims v. Arrow Fin.Servs., LLC*, 132 S. Ct. 740, 742 (2012). *See also Missouri ex rel Nixon v. Progressive Business Publications, Inc.*, 504 F.Supp.2d 699, 701 (W.D. Mo. 2007) (holding that petition was

properly removed by defendant because the district courts of the United States have exclusive jurisdiction over TCPA actions).

7. Venue is proper because the plaintiff's principle place of business and the St. Charles County Circuit Court, Missouri is within the United States District Court for the Eastern District of Missouri, Eastern Division. *See* 28 U.S.C. §§ 110, 1441(a) and 1445(a).

**WRITTEN NOTICE OF REMOVAL**

8. AUL has given written notice of removal to Plaintiff contemporaneously with the filing of this Notice of Removal, filed as a separate document. A copy of the Notice to Plaintiff of Removal is attached as Exhibit B.

9. Upon assignment of a federal court case number, AUL shall file a notice of filing notice of removal with the Clerk of the St. Charles County Circuit Court. As per the Eastern District of Missouri Removal Case Check List, within three days of the filing of this Notice of Removal, AUL shall file with this Court the notice to state court that has been acknowledged by the St. Charles County Circuit Clerk.

**ADDITIONAL PROCEDURAL REQUIREMENTS**

10. Pursuant to Local Rules 2.02 and 2.03, the Original Filing Form is filed herewith.

11. Pursuant to Local Rules 2.02 and 2.03, the Civil Cover Sheet is filed herewith.

**WHEREFORE**, AUL respectfully request this Court exercise its subject-matter jurisdiction over this action to the exclusion of other proceedings in the State Court in accordance with the law and for such other and further relief as this Court deems appropriate in the premises.

Respectfully submitted,

**WEISS ATTORNEYS AT LAW, P.C.**

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**Attorneys for Defendant A.U.L. Corp.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was placed in the U.S. Mail and via service of the ECF system, postage prepaid, this 19<sup>th</sup> day of July 2016 for service upon the following:

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